

**Before the
Federal Communication Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
)	
Western Wireless Corporation)	
Petition for Wavier of Section 54.314(d))	
Of the Commission's Rules)	

**Comments Of
Fred Williamson and Associates, Inc. ("FW&A")
In Opposition to the Petition of Western Wireless
On behalf of:**

**Chouteau Telephone Company, an Oklahoma ILEC
H&B Telephone Communications, Inc., a Kansas ILEC
Moundridge Telephone Company, Inc., a Kansas ILEC
Pine Telephone Company, Inc., an Oklahoma ILEC
Pioneer Telephone Association, Inc., a Kansas ILEC
Totah Telephone Company, Inc., a Kansas and Oklahoma ILEC
Twin Valley Telephone, Inc., a Kansas ILEC**

Collectively, the "ILECs"

Summary

Western Wireless Corporation (“Western Wireless”), on March 13, 2003 filed a petition with the Federal Communications Commission (“Commission”) seeking a waiver of the deadline set forth in section 54.314(d)(1) of the Commissions rules. Western Wireless stated that it’s goal in petitioning for the wavier was to enable them to retroactively receive high cost support for service provided in areas outside of the Pine Ridge Reservation beginning with the first quarter of 2003.

The petition of Western Wireless should be denied because Western Wireless did not meet the Commission’s rules as contained in section 54.314¹. Western Wireless also did not meet the South Dakota Public Utility Commissions (South Dakota PUC) rules for certification in that Western Wireless failed to provide the South Dakota PUC, on a timely basis, the information it needed to fulfill it’s duties to the FCC².

Comments

Western Wireless is attempting to get the Commission to reward it (Western Wireless) for failing to fulfill it’s obligations under the Commissions rules as well as the rules of the state of South Dakota. The reward Western Wireless seeks is

¹ CFR, Title 47, Volume 3, Part 54-Universal Service, Subpart D – Universal Service Support for High Cost Areas, § 54.314 State Certification of support for rural areas.

² Order Denying Certification, TC02-156, dated September, 27, 2002, Before the Public Utilities Commission of the State of South Dakota; In the Matter of the Request of WWC License LLC for Certification Regarding Its Use Of Federal Universal Service Support,

to be able to retroactively collect federal universal service support. FW&A has not seen an estimate of the dollars that Western Wireless seeks to collect on a retroactive basis, but regardless of the dollar amount of the reward that is being sought by Western Wireless, the Commission should not grant their petition because granting the Western Wireless petition in this case is in direct conflict with the Commission's own rules. The section that is causing some problems for Western Wireless is Section 54.314(d) and (d)(1) which state/s:

(d) Filing deadlines. Upon the filing of the certification described in paragraph (c) of this section, support shall be provided pursuant to the following schedule:

(1) Certifications filed on or before October 1. Carriers for which certifications are filed on or before October 1 shall receive support pursuant to Secs. 54.301, 54.305, and/or 54.307 and/or part 36, subpart F of this chapter, in the first, second, third, and fourth quarters of the succeeding year..

The language in that section is fairly straight forward in that those carriers who have certifications, as described in section (c), on file with the appropriate organizations and who have been certified as ETCs by the state commission on or before October 1 will receive support dollars in the first, second, third and forth quarter of the following year. Western Wireless did not meet those requirements. A reading of the three page South Dakota PUC's order TC02-156³ where they deny Western Wireless certification explains that they were unable to certify Western Wireless because Western did not provide the state PUC with sufficient or timely information. The information being sought from Western wasn't

³ TC02-156 – Order Denying Certification; In The Matter Of The Request Of WWC License LLC For Certification Regarding Its Use Of Federal Universal Service Support; Signed September, 27, 2003; see the South Dakota PUC website <http://www.state.sd.us/puc/puc.htm>, Commission Orders, Telecommunications Orders issued 2002, TC02-156

something new or exotic that the PUC had recently demanded. It was the same information that all other Incumbent Local Exchange Carriers (ILECs) and ETCs produce on an annual basis in order to enable the PUC to certify that the support dollars they seek will be used in accordance with the rules. The fact that Western Wireless was not certified by the South Dakota PUC before October 1 2002 to receive high cost universal service support funds for the first or second quarters in 2003 more than adequately provides the rationale for the Commission to deny Western's petition in this case.

Western Wireless was not able to conform to the rules that are applicable to all ILECs as well as ETCs that desire to receive support pursuant to Sections 54.301, 54.305 and/or 54.307 and/or Part 36. Western Wireless was not able to satisfactorily or timely inform and certify to the South Dakota PUC that the support monies they would receive would be used only in the state of South Dakota and only for the purposes that they were intended. If they were not able to provide that certification, then on what basis can they expect their petition to be granted. Apparently they are hoping that the Commission will overlook the facts in this issue. For clearly, if the facts are considered, it is certain that Western Wireless did not meet the rules of the process and therefore their petition should be denied.

The fact that Western Wireless was not even actually granted ETC status in the areas for which it is seeking support dollars until Thursday January 2, 2003⁴ is also something that they obviously didn't think needed to be discussed in their petition. But that is when they obtained the ETC status.

CONCLUSION

With the certifications that Western Wireless currently has in hand and in compliance with 54.314(d)(3) "Certifications filed before April 1" they are eligible to receive funds in the third and forth quarters of 2003.

However, they were not certified to receive funds for the first or second quarters in 2003 and that covers the time frame for which they are of course petitioning. The petition of Western Wireless in this case should be denied on the basis of their failure to meet the rules and requirements associated with receiving high cost universal service pursuant to Sections 54.301, 54.305 and/or 54.307 and/or Part 36 of the Commissions Rules. They did not meet the filing deadline as specified in Sections 54.314(d)(1) and in fact were not even granted ETC status for the areas in which they are seeking high cost support until the first quarter of 2003. They have not stated or indicated any financial harm that they would endure if the petition were not granted, but even if they had, they should not be rewarded for failing to comply with the rules of South Dakota PUC and

⁴ MINUTES OF THE AD HOC MEETING, South Dakota Public Utilities Commission Meeting Thursday, January 2, 2003; 9:00 A.M. State Capitol Building, Room 464 Pierre, South Dakota – see South Dakota PUC website <http://www.state.sd.us/puc/puc.htm>, Commission Minutes

most specifically not rewarded for non compliance with FCC rules. Their petition should be denied.

Respectfully submitted on behalf of the ILECs by,

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